

MARYLAND COMMISSIONER OF

FINANCIAL REGULATION

v.

CHARLES W. DONALDSON

LICENSEE

* BEFORE SONDRAL SPENCER,

* AN ADMINISTRATIVE LAW JUDGE

* OF THE MARYLAND OFFICE OF

* ADMINISTRATIVE HEARINGS

* OAH CASE NO.: DLR-CFR-76A-09-10566

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STATEMENT OF THE CASE

On January 27, 2009, the Maryland Commissioner of Financial Regulation (the CFR), Department of Labor, Licensing and Regulation (DLLR), charged Charles W. Donaldson (the Licensee), a licensed mortgage loan originator, with violations of the Financial Institutions Article (FI), Annotated Code of Maryland. On February 23, 2009, the CFR referred this matter to the Office of Administrative Hearings (OAH) for a hearing. The CFR delegated to the OAH the authority to issue proposed findings of fact and conclusions of law, and a recommended order.

On August 21, 2009, I held a hearing at the OAH in Hunt Valley, Maryland. Assistant Attorney General Matthew A. Lawrence represented the CFR. The Licensee was not present and no one appeared to represent the Licensee.

I heard this case pursuant to FI section 11-616 (Supp. 2009). Procedure in this case is governed by the Administrative Procedure Act, Md. Code Ann., State Gov't §§ 10-201 through 10-226 (2009), OAH's Rules of Procedure, Code of Maryland Regulations (COMAR) 28.02.01, and COMAR 09.01.03.

ISSUES

The issues are:

1. Whether the Licensee violated FI section 11-517(a)(5) by failing to respond to a subpoena issued by the CFR; and if so,
2. What, if any, sanctions are appropriate?

Exhibits

The CFR submitted the following documents that were admitted into evidence:

CFR Ex. #1 April 10, 2009 Notice of Hearing

CFR Ex. #2 February 23, 2009 Letter to the OAH from the CFR

CFR Ex. #3 February 25, 2009 Request for subpoenas from the CFR

CFR Ex. #4 January 27, 2009 Charge letter to the Licensee from the CFR

CFR Ex. #5 Copy of CFR Ex. #4 with the certified mail envelope marked "unclaimed, unable to forward"

CFR Ex. #6 May 14, 2008 Subpoena issued to the Licensee from the CFR

CFR Ex. #7 Licensee's licensing information

The Licensee did not submit any exhibits.

Testimony

Calvin I. Wink, Jr., Supervisory Investigator for the CFR, testified on behalf of the CFR.

No one testified on behalf of the Licensee.

FINDINGS OF FACT

I find the following facts by a preponderance of the evidence:

1. At the time of the filing of the complaint, the Licensee was licensed by the State of Maryland as a mortgage originator, having license #3481024. This license expired on January 2, 2009. The Licensee was issued a broker's license for Sunset Mortgage Company on July 12, 2007. The Licensee's broker's license was placed in an inactive status when Sunset Mortgage Company ceased doing business.
2. In May 2008, the CFR received a complaint alleging that the Licensee had engaged in illegal activities related to loans that the Licensee had brokered to a police officer. According to the complaint, the loans totaled over one million dollars each, involved homeowners in default or in foreclosure, and further alleged that subsequent to settlement, the Licensee was paid large sums of money for his "foreclosure rescue" activities.
3. As a result of the complaint, the CFR assigned Calvin Wink, Jr., to conduct an investigation.
4. On May 14, 2008, the CFR issued a subpoena *duces tecum* to the Licensee requesting that he appear at the CFR's office in Baltimore, Maryland on May 29, 2008, and produce all documents pertaining to mortgage lending or brokering activities associated with the police officer identified in the complaint.
5. The subpoena was delivered to the Appellant's home on May 15, 2008.
6. On May 20, 2008, the Licensee telephoned Mr. Wink and advised that he would submit to the interview scheduled for May 29, 2008.

7. The Licensee failed to appear for the May 29, 2008 interview and failed to produce the requested documents.
8. The CFR's attempts to contact the Licensee at his home and by telephone were unsuccessful. By October 1, 2008, the telephone numbers that the Licensee had provided to the CFR had been disconnected and the Licensee's employing mortgage lender, Sunset Mortgage Company, had ceased doing business.
9. On January 27, 2009, the CFR issued a letter (charging document) to the Licensee advising him that he was being charged with violation of the FI and that a hearing would be automatically scheduled.
10. The OAH issued a hearing notice to the Licensee on April 10, 2009 at his address of record by certified and regular mail. The certified mail was returned as unclaimed but the regular mail was not returned.

DISCUSSION

The Licensee's Failure to Appear at the OAH Hearing

This CFR filed charges against the Licensee by a letter dated January 27, 2009. The charging document was mailed to the Licensee, by regular and certified mail, return receipt requested, at the Licensee's address of record, 12444 Fletchertown, Road, Bowie, Maryland 20720. The regular mail was not returned, but the certified mail was returned and marked unclaimed.

The CFR forwarded this case to the OAH on February 23, 2009. On April 10, 2009, the OAH sent a hearing notice to the Licensee. The hearing notice was mailed by regular and certified mail, return receipt requested, to the Licensee's address of record. The hearing notice

indicated that a hearing was scheduled for 9:30 a.m. on August 21, 2009 at the offices of the OAH and that failure of the Licensee to appear could result in a decision against the Licensee.

I called this case for a hearing promptly at 9:30 a.m. on August 21, 2009, at which time no one appeared on behalf of the Licensee. Assistant Attorney General Matthew A. Lawrence was present on behalf of the CFR and was prepared to go forward with the hearing. I waited 15 minutes to see if the Licensee or a representative of the Licensee would appear and none did.

Based upon the evidence before me, I find that the Licensee was aware of the charging document in this case and the hearing notice because the regular mail was not returned by the postal service. Since the Licensee failed to appear for the hearing after receiving notice, the CFR chose to proceed with a hearing on the merits as opposed to the entry of a default order.

The Merits

The CFR has the burden of proof, by a preponderance of the evidence, to demonstrate that the Licensee violated the statutory sections at issue. *See, e.g.,* Md. Code Ann., State Gov't § 10-217 (2009); *Comm'r of Labor and Indus. v. Bethlehem Steel Corp.*, 344 Md. 17 (1996). The CFR has charged the Licensee with violation of FI section 11-517(a)(5). This section of the Code provides:

§ 11-517. Suspension or revocation of license; enforcement of subtitle, regulations, etc.; employment of mortgage originators.

(a) *Suspension or revocation of license - In general.* Subject to the hearing provisions of § 11-518 of this subtitle, the Commissioner may suspend or revoke the license of any licensee if the licensee or any owner, director, officer, member, partner, stockholder, employee, or agent of the licensee:

...

(5) Otherwise demonstrates unworthiness, bad faith, dishonesty, or any other quality that indicates that the business of the licensee has not been or will not be conducted honestly, fairly, equitably, and efficiently.

Md. Code Ann., Fin. Inst. § 11-517(a)(5) (Supp. 2009).

The basis for the charge against the Licensee is that he failed to comply with the subpoena *duces tecum* issued by the CFR on May 14, 2008. This subpoena was mailed to the Licensee's address of record. The Licensee confirmed receipt of the subpoena when he spoke to Mr. Wink by telephone on May 20, 2008, indicating that he would appear at the interview and submit the requested documents. The Licensee, however, failed to appear at the interview and failed to produce the requested documents.

Pursuant to FI sections 2-114(b) and 11-515(d), once the complaint was filed against the Licensee, the CFR had the authority to initiate an investigation and to issue subpoenas and request documents as part of the investigation. Sections 2-114(b) and 11-515(d) provide as follows:

§ 2-114. Same - Powers of Commissioner; oaths and discovery; order to compel.

(a) *Powers of Commissioner* - The Commissioner may:

(1) Make public or private investigations as the Commissioner considers necessary to:

(i) Determine whether a person has violated a provision of law, regulation, rule, or order over which the Commissioner has jurisdiction; or

(ii) Aid in the enforcement of a law or in the prescribing of regulations, rules, and orders over which the Commissioner has jurisdiction;

...

(b) *Oaths and discovery*. - For the purpose of an investigation or proceeding, the Commissioner or an officer designated by the Commissioner may administer oaths and affirmations, subpoena witnesses, compel their attendance, take evidence, and require the production of books, papers, correspondence, memoranda, agreements, or other documents or records which the Commissioner considers relevant or material to the inquiry.

§ 11-515. Investigatory powers and duties of Commissioner; complaints.

...

(b) *Filing of complaints; investigation of complaints or violations*. -

(1) Any person aggrieved by the conduct of a licensee under this subtitle in connection with a mortgage loan may file a written complaint with the Commissioner who shall investigate the complaint.

(d) *Powers in connection with examination or investigation.*- In connection with an examination or investigation made under this section, the Commissioner may:

(1) Examine the books and records of any licensee or of any other person who the Commissioner believes has violated any provision of this subtitle, or any rule or regulation adopted under this subtitle, or of any other law regulating mortgage loan lending in the State;

(2) Subpoena documents or other evidence; and

(3) Summon and examine under oath any person whose testimony the Commissioner requires.

The CFR had the authority to issue the subpoena of May 14, 2008, and the Licensee had an obligation to comply with the subpoena. The Licensee's failure to comply with the subpoena is a violation of FI section 11-517(a)(5). In light of the serious charges contained in the complaint against the Licensee, I find that the Licensee's failure to comply with the subpoena demonstrates bad faith and unworthiness, and may well demonstrate dishonesty. In order to address the allegations in the complaint, the Licensee had an obligation to assist in the CFR's investigation. His failure to cooperate in the investigation casts a shadow on the Licensee's integrity and indicates further that his business was not, and would not be in the future, conducted honestly, fairly, equitably, and efficiently. Furthermore, the Licensee's failure to appear at the hearing is simply a continuation of his uncooperative attitude and casts further doubt upon his integrity and honesty.

Revocation

Consequently, the CFR seeks to revoke the Licensee's mortgage originator's license. The Licensee's conduct amply justifies the CFR's request, which, if granted, will serve to protect

the public. According to the CFR, the Licensee's violation is serious and warrants revocation of the Licensee's license.

At the time of the hearing, the Licensee's mortgage lending license had expired as of January 2, 2009. This is significant because under COMAR 09.03.06.03C(2), a licensee has a thirty-day grace period within which he has the right to renewal in the same manner as if the license had not expired.

Although there is no Maryland case law directly on point, the CFR presented a final order issued on July 28, 2009 by the CFR (OAH No. DLR-CFR-76a-08-37864) and persuasive case law from Pennsylvania holding that the grace period constitutes a property interest and leaves a licensee subject to revocation during the grace period as if the license was still in effect.

Nicoletti v. State Board of Vehicle Mfrs., Dealers and Salesperson, 706 A.2d 891 (Pa. Cmwlth. 1998). *See also, Wise v. Ohio Motor Vehicle Dealers Bd.*, 106 Ohio App.3d 562 (1995) (voluntary surrender of license prior to hearing date does not deprive licensing agency of authority to revoke or suspend license). The *Wise* decision discusses the incongruous results that would flow from allowing a licensee charged with regulatory violations to avoid suspension or revocation by the simple expedient of surrendering his license. This would effectively deprive the regulatory agency of the control necessary to protect the public. It could also leave the licensee free to re-apply for licensure without the regulatory agency having had the ability to create a record of previous violations. Maryland law also recognizes that the surrender of a license does not affect any civil or criminal liability of a licensee for acts committed before the license was surrendered. FI section 11-514 (2003). The rationale supporting this law persuades me that expiration of the license during the pendency of proceedings does not extinguish the CFR's right to seek revocation.

For these reasons, I find that revocation of the Licensee's mortgage lender license is appropriate.

CONCLUSIONS OF LAW

Upon the foregoing Findings of Fact and Discussion, I conclude, as a matter of law, that the Licensee violated FI section 11-517(a)(5) (Supp. 2009);

I conclude further, as a matter of law, that the Licensee is subject to revocation of his license. FI section 11-517(a) (Supp. 2009).


RECOMMENDED ORDER

I RECOMMEND that the Maryland Commissioner of Financial Regulation:

ORDER that the Licensee's license as a mortgage lender/broker be revoked; and

ORDER that the records and publications of the Maryland Commissioner of Financial Regulation reflect this decision.

November 13, 2009
Date Decision Mailed



Sondra L. Spencer
Administrative Law Judge

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